COMPAS BREAKFAST BRIEFING SUMMARIES

BREXIT FOR BREAKFAST?

BREAKFAST BRIEFINGS SERIES 6:

MIGRATION IMPLICATIONS OF EU WITHDRAWAL

This series was funded by
The UK in a Changing Europe Initiative
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UNIVERSITY OF OXFORD

COMPAS
CENTRE ON MIGRATION, POLICY & SOCIETY

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The U.K.'s potential departure from the European Union has been the biggest political issue in British media and policy debate join 2016 so far. In many respects the referendum on EU membership has often looked much more like a referendum on the U.K.'s migration policy, and on the role of the EU as a source of migrants to UK.

In late 2015 and early 2016 the Centre on Migration, Policy and Society (COMPAS) organised a series of breakfast briefings to explore some of the key facets of the migration component of the Brexit debate. Leading thinkers from the University of Oxford and elsewhere shared thoughts on the labour market, legal, security, human rights and welfare dimensions of the Brexit debate.

This short document summarises some of the key points discussed by:

Dr Martin Ruhs, Associate Professor of Political Economy at the University of Oxford Department for Continuing Education,
Martin questioned whether free movement and broad access to the welfare state were compatible, suggesting that to be politically sustainable in the long run, EU laws and policies need to take more account of variations in their national effects for individual member states.

Professor Jonathan Wadsworth, Senior Research Fellow at the London School of Economics and Royal Holloway, University of London
Jonathan discussed the labour market impacts of EU migration, concluding that research has found little evidence of large adverse labour market effects on the UK-born population as a result of rising EU immigration. Nor was there much evidence of large gains.

Dr Catherine Costello, Andrew W Mellon Associate Professor of Human Rights and Refugee Law at the Refugee Studies Centre, University of Oxford
Catherine discussed the implications a Brexit would have on refugee law in the UK, noting that an advantage of EU membership is that the UK already has a relationship of selective participation, and can opt in at an early stage in order to take part of the negotiation of measures. (summary text not currently available)

Madeleine Sumption and Dr Carlos Vargas-Silva of the Migration Observatory at the University of Oxford
Madeleine and Carlos discussed changes in patterns of immigration to the UK that could occur in certain Brexit scenarios, noting that if the UK did introduce admission requirements for EU nationals after leaving the EU, the requirements for work visas would be particularly significant since a majority of EU nationals coming to the UK report doing so for work.

James Kearney, Senior Programme Manager at Institute of Strategic Dialogue
James discussed the security implications of Brexit, noting that no clear answers had emerged, and that political stance and belief continue to supersede a deeper analysis of the relative usefulness that membership of the European Union provides, and the positive or negative qualities of the instruments contained therein.

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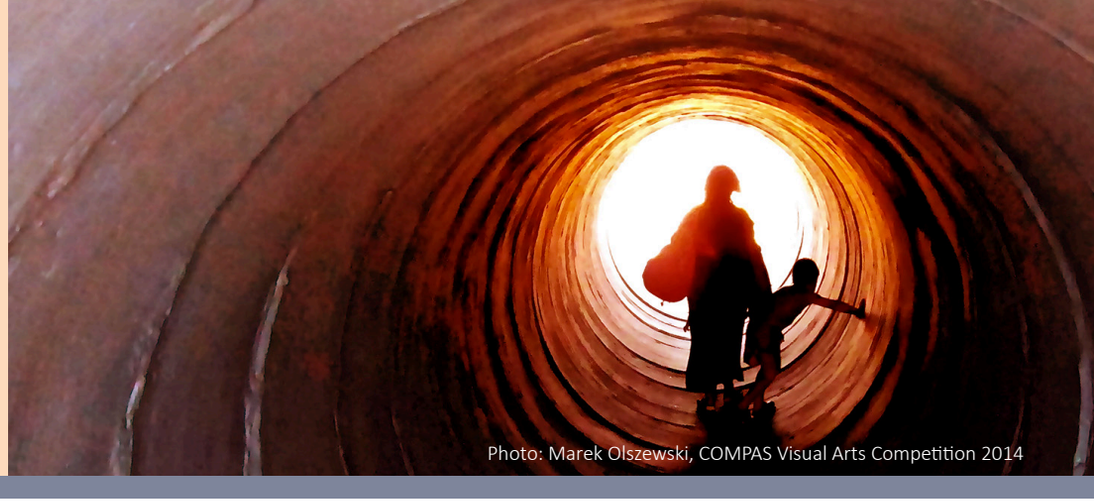
Photo: Marek Olszewski, COMPAS Visual Arts Competition 2014

EU migration and welfare benefits: Is unrestricted labour immigration compatible with an inclusive welfare state?

The free movement of workers is one of the fundamental freedoms of the European Union (EU). It gives citizens of EU countries the right to move freely and take up employment in any other EU country and – as long as they are "workers" – the right to full and equal access to the host country's welfare state.

This combination of unrestricted intra-EU migration and equal access to national welfare states for EU workers is an important exception to the tension and trade-off between immigration and access to social rights that characterizes the labour immigration policies of most high-income countries (including many European countries' policies for admitting workers from outside the EU, see Ruhs 2013).

EU member states have in recent years been engaged in a highly divisive political debate about the sustainability of this 'EU exceptionalism' in the future. A group of member states, most notably the UK but also including Denmark and the Netherlands, have called for more restricted access for EU workers to welfare benefits. At the same time, some other member states and the European Commission have expressed their scepticism and, in some cases, outright objection to calls for reforming free movement insisting that the current policy of unrestricted access to labour markets and full and equal access to welfare states for EU workers must continue.

The current debates about the future of free movement raise a number of important research questions: What explains the shifting domestic politics of free movement across different EU countries? Why are some member states much more concerned about the EU's "exceptionalism" with regard to immigration and access to the welfare state for EU workers than others? And what are the implications for the political sustainability of the current rules for free movement in the future? To address these questions, a wide range of factors would need to be considered including differences relating to institutions, interest groups, ideas, socio-economic conditions and public opinion as well as variations in policy-making processes across different EU member states.

My recent COMPAS working paper (Ruhs 2015) – which is the first output of my larger research project on EU migration, labour markets and welfare states – makes a first contribution to this new research agenda. It focuses on two key factors that, I argue, can help explain the scale and economic effects of EU immigration as well as potentially explain the differential policy concerns about free movement across EU member states. These two factors are the nature of the national labour market and the type of the national welfare state, both of which vary considerably across different EU member states.

In a free movement area with unrestricted labour migration across countries, the nature of the labour market plays an important role in shaping the scale of immigration in particular countries. More flexible labour markets tend to attract more migrant workers, especially for employment in lower-waged jobs, than more regulated labour markets. At the same time, the nature of the welfare state, especially the extent

to which it provides non-contributory benefits, impacts on the net fiscal contribution that new migrants make. In countries with welfare systems characterized by a high share of non-contributory benefits, low-skilled immigration will, ceteris paribus, create a smaller net fiscal benefit (or greater net loss) than in countries with welfare states that include a greater share of contributory benefits, at least in the short run.

The key argument at this stage of my research project is a conceptual one: in countries that have both a relatively flexible labour market and a relatively non-contributory welfare state (and the exploratory empirical analysis in Ruhs 2015 suggests that this is the case in the UK and Ireland) 'free movement' can generate specific fiscal costs and economic tensions that are not present, at least not to the same degree, in countries characterised by more regulated labour markets and/or more contributory welfare states. These specific costs and economic tensions have the potential to undermine the domestic political support for the free movement of EU workers, thus threatening the political sustainability of the current rules for intra-EU migration among the 28 member states.

Whether and to what extent this potential threat results in actual political pressure for policy change in countries with relatively flexible labour markets and relatively non-contributory welfare states depends on a range of factors related to the domestic politics of immigration. I argue that a key factor is whether, and to what degree, it is possible for national policy-makers to justify and defend the current rules for free movement based on the "collective impacts on the EU as a whole" (i.e. in terms of the impacts on all EU citizens as a group) rather than just (or primarily) in terms of the "national" effects for their citizens.

If there is widespread agreement within the domestic policy spheres of EU member states that the primary (or at least an important) aim of free movement is to maximize the net benefits for the EU as a whole (i.e. for all EU citizens), the relatively greater costs incurred from immigration by selected member states, especially those with flexible labour markets and less contributory welfare states, will be less important as these costs will be easily offset by the very large gains that employment abroad generates for EU migrants and their families. It is not unreasonable to hypothesise that Ireland may be an example of this approach. Despite its similarity to the UK in terms of labour market flexibility and contributory basis of the welfare state, Ireland has not been among the most vocal advocates for reforming the current rules for free movement.

If, on the other hand, there are strong domestic political pressures to increase the net benefits from free movement for individual member states – as it is currently the case in the UK – the tension between unrestricted immigration and equal access to the welfare state can become a problem that threatens the political sustainability of free movement. My own assessment (which is necessarily subjective and surely influenced by the fact that I have been an EU migrant in EU-sceptical Britain for the past 20 years!) is that, to be politically sustainable in the long run, EU laws and policies need to take more and not less account of (variations in) their national effects for individual member states.

Key references:

- Ruhs, M. (2015) Is unrestricted immigration compatible with inclusive welfare states? The (un)sustainability of EU exceptionalism', COMPAS Working Paper No. WP-15-125, COMPAS, Oxford.
- Ruhs, M (2013) The Price of Rights: Regulating International Labor Migration, Princeton University Press, www.priceofrights.com

About the speaker: Martin Ruhs is Associate Professor in Political Economy at the Oxford University Department for Continuing Education, and a COMPAS Affiliate.

COMPAS Breakfast Briefings present topical, cutting edge research on migration and migration related issues. This research is made accessible every month to an audience of policy makers and other research users.

Thumbnail: Adela Nistora, COMPAS Visual Arts Competition 2014

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Photo David Shaw, COMPAS Visual Arts Competition 2015

Brexit and the UK Labour Market

No one can predict with any degree of certainty what the labour market consequences of the UK leaving the European Union would be. There are so many policy options, institutional factors and their interactions that determine labour market performance, which may play out in different ways (visa quotas, residency requirements, corporate behaviour, trade agreements, reaction in other countries, to name but a few), that to try to anticipate every possible scenario would be heroic in the extreme.

So can anything be said? Perhaps one way is to set out the facts as we know them with regard to the position of EU-nationals living and working in the UK and the effects so far, if any, on the labour market prospects of UK nationals. Knowing what happened when EU migration to the UK increased might give a hint as to what could happen if EU immigration turned into forced emigration.

Every year, for the last 10 years or so, net migration from the EU has averaged 100,000 individuals. In the last few years inflows have risen noticeably above this average. The result of these inflows, and those from earlier years, is that there are (in 2015) around 3.3 million EU-nationals living in the UK, of which around 2.7 million are aged 16+ and 2 million are in work.[1] Two million is around 6% of all employed. EU-nationals also comprise 5% of all unemployed and 3% of the (non-student) inactive including retirees. So, because EU migrants are younger and the majority are in work, EU immigrants "pay their way", i.e. they generate more in taxes than they receive in welfare benefits - more so than the UK-born population or non-EU nationals (see Dustmann and Frattini 2014).

While some 30% of employed EU-nationals are Polish, the nationalities of the rest are quite evenly spread across the other 26 member countries. Over ¾ of these EU-nationals had been resident for more than four years. This may become relevant if EU-nationals were made to apply for leave to remain after five years in work. Another issue that may well be relevant in the near future is the numbers claiming welfare benefits. Data on benefit recipients by nationality are hard to come by. Equally, the rules on claiming apply to households, not individuals. The Labour Force Survey (LFS) asks individuals to list the types of benefits they receive, but this is known to under-estimate the true total. According to the LFS some 10% of employed tax credit claimants are EU nationals.[2]

EU-Nationals in work are quite evenly spread throughout the country (outside London), occupations and industries, with a notable exception in manufacturing. Around 30% of those working in the food manufacturing sector are, currently, EU-nationals, most of whom are engaged in elementary processing work.

EU-nationals by industry

Industry	EU workforce	% share in industry	Non-EU immigrant workforce	% share in industry
Agriculture	20,000	5.4	10,000	3.3
Energy	20,000	4.3	30,000	5.2
Manufacturing	310,000	10.4	210,000	10.4
Construction	160,000	7.1	120,000	5.5
Retail, hospitality	440,000	7.7	640,000	11.1
Transport	210,000	7.4	400,000	14.1
Finance	340,000	6.4	560,000	10.6
Public admin.	380,000	4.1	960,000	10.4
Other services	90,000	4.8	160,000	8.6
Total	2.0 million	6.3	3.1 million	10.0

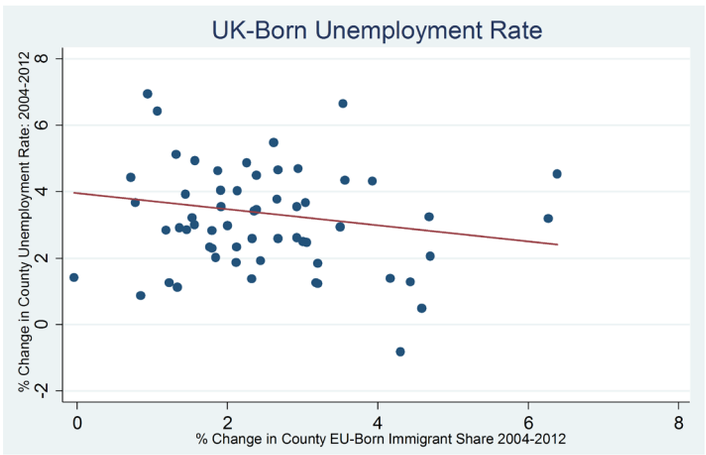
1. The focus is on EU-nationals (self-defined) rather than country of birth, since any decision to restrict entry would presumably be based on nationality and not country of birth.

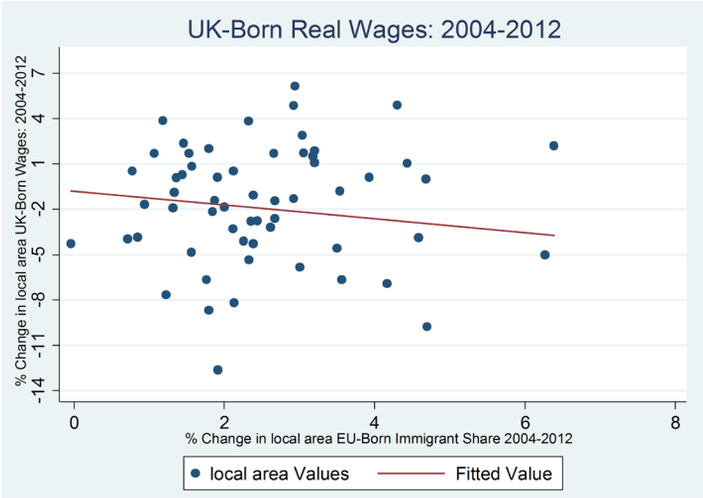
2. House of Commons (2014) gives HMRC estimates that 8% of 2014 in work tax credit households were EU families – though this figure can include (an unknown) number of households with a mix of UK and EU nationals. A similar EU proportion holds among single claimants.

Effects on UK-Born

Many people worry about rising immigration because they think it results in competition for jobs and downward pressure on wages. This thinking tends to neglect the fact that rising immigration raises demand (for food, clothes etc.) and so it is not a given that employment or wages of UK nationals will fall. That said, estimating the causal effects of rising EU immigration is not an easy task. Any estimate is likely to be an average that conceals losses and gains for some. The two graphs below are therefore merely suggestive of the likely link between EU immigration and unemployment and wage rates of UK-born workers.

The graphs show the change in the unemployment rate for UK-born workers against the change in the EU-national population share in each of 60 UK local labour market areas over the period 2004 to 2012 – the period in which unemployment rose from its lowest point to its highest point for twenty years, and a period in which we might expect any adverse effects to emerge. Looking at the change over time conceals many features of the local labour market which could also explain unemployment performance. There are other factors that could also change over time, so the graphs are simply illustrative. Looking at the first graph, it is hard to say that unemployment of UK-born workers grew any faster in areas that experienced more EU immigration. Similarly, there is little association with real wage growth. Wages of UK-born workers grew – or rather, on average fell – over this period at much the same rates in areas with lots of EU immigration as in areas where the rate of EU immigration was lower.





So what is to be made of this? There is little evidence of large adverse labour market effects on the UK-born population caused by rising EU immigration. Nor is there much evidence of large gains. Leaving the EU might attenuate population growth (and hence GDP), but the effects on the labour market are not that easy to predict without more details on the type of institutions and regulations that would emerge in the wake of a UK exit.

References

- Dustmann, C. and Frattini, T. "The Fiscal Effects of Immigration to the UK." The Economic Journal 124 (2014): F593-F643.
- House of Commons (2014) "Statistics on migrants and benefits", House of Commons Note Standard http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06955

About the speaker: Jonathan Wadsworth is Senior Research Fellow at Royal Holloway College and the Centre for Economic Performance, LSE

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Thumbnail: Marek Olszewski, COMPAS Visual Arts Competition 2015

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BRIEFING 45
JUN 2016

The UK and the CEAS – A Leaving Matter?

What is the UK's position in the Common European Asylum System? What difference, if any, would BREXIT make?

This talk has five parts. In Part I, I first sketch the evolution and contours of the Common European Asylum System. Part II examines the UK's current position in this policy area, in particular its freedom to decide whether to participate in any or all aspects of the Common European Asylum System. I contrast the UK position with that of Denmark and Norway, to assess the position of an EU Member State with a different form of opt-out, and a non-Member State who nonetheless accepts some EU asylum measures. Part III then examines the aspect of the CEAS the UK seems most in favour of maintaining, the Dublin System. Dublin is of contemporary relevance, as it illustrates the shortcomings in the CEAS, and is currently under revision. Dublin reform is contextualised in light of the responses to the 'refugee crisis' of 2015. In Part IV, I include a short discussion of immigration detention, a matter where the UK has chosen not to be bound by EU norms. Finally, in Part V, BREXIT and the CEAS are discussed. What is the relevance of asylum policy for the BREXIT debate? Is this just a policy area where the UK's already exceptional position means that 'In or out' is not all that significant? Or are there lessons for other states position vis-à-vis the CEAS that should be taken into account in this debate?

Throughout this talk I highlight some of the tensions, even perhaps paradoxes of being or staying out. There is often a potential trade-off between influence and autonomy: States that stay out of a particular policy or process for autonomy reasons, often find themselves opting in afterwards for practical reasons, but without having had the opportunity to influence the policy in question. I illustrate this phenomenon using examples from the practices of other states.

Secondly, I try to identify some of the complexities of the idea of preserving autonomy over asylum practices, which intimately affect the rights of others. As I illustrate by reference to immigration detention, staying out of EU measures may be construed as preserving autonomy, but perhaps that autonomy is really a mask for excessive executive discretion? Admittedly, 'excessive' is a value judgment, but one that is legally sound concerning UK immigration detention.[1]

I. Understanding the CEAS

The EU's engagement with asylum policy is deeply intertwined with the project of liberalising intra-EU mobility. In that respect, it differs from other regional refugee protection projects, which are often motivated by the need to adapt refugee protection to particular regional contexts and establish greater cooperation for refugees from within particular regions. For instance, in both Africa and Latin America, regional initiatives expanded the definition of the refugee and created new cooperative frameworks, on the assumption that refugees were from within the region and that the region in question was mainly responsible for their protection.[2]

In contrast, the EU engagement with refugee issues came first emerged alongside other external migration issues in the early years of Schengen, and then in particular in the 1990s,

Please note this text was based on a talk given on 13 November 2015, but updated to consider some subsequent legal developments.

when the concern was that increasing numbers of asylum seekers were availing of protections which previously had been limited by Cold War division of Europe. Western European states developed their own means to limit and deflect, notably safe country practices (safe country of origin; safe third country). The Balkan wars produced hundreds of thousands of refugees, but these were mainly granted temporary protection, rather than asylum (which had tended to be viewed as entailing a path to permanent residence until then, although this is not a feature of international refugee law under the 1951 Convention on the Status of Refugees ('CSR' or 'Refugee Convention').[3] The EU Accession to integrate central and eastern European countries often involved extending the non-binding EU asylum measures eastwards. The Dublin Convention was signed in 1990, but entered into forced in 1997, with the aim of making clear which state was responsible for asylum claims, ostensibly to eliminate multiple claims.

The Treaty of Amsterdam in 1997 was the milestone for the formal lawmaking on asylum, with the Tampere Summit pledging that the EU would create a 'Common European Asylum System.' The EU Treaties specify the content of the CEAS, and that requires that EU policy be 'in accordance with the [Refugee Convention] 'and other relevant treaties.'[4] Acting unanimously, the then 15 national governments in the Council adopted the key legislation on asylum. The first measure adopted was the Temporary Protection Directive to deal with 'mass influxes', based on the experiences in responding to the Kosovar refugee arrivals. For good or ill, it has remained dead letter. The CEAS also encompasses directives harmonising 'qualification' as an international protection beneficiary, the reception conditions that should be provided to applicants while their claims are being examined, and the procedures applicable to these processes.[5] Trying to get consensus across 15 governments meant the first phase Directives, in particular that on asylum procedures, meant low standards with many exceptions and gaps, hardly harmonising procedures at all. The studies on the implementation of the first phase instruments showed quite varied impacts and approaches.[6]

Each of these measures has since been 'recast', using the 'ordinary legislative procedure' that is, entailing qualified majority in the Council and the important co-legislative role of the European Parliament. Significant too is the increased role of the Court of Justice, which now has full jurisdiction of asylum and migration matters. To simplify and exaggerate, the second iteration – the recasts, because they involve the European parliament in the process, are probably a little bit better from a refugee protection point of view but they've also become much more complicated: they're much longer, they have very complex provisions on, let's say, the protection of the vulnerable, the protection of children in asylum procedures.[7]

These are the measures that comprise the CEAS. We could also add in some of the EU funding on asylum, migration and borders. The current Asylum Migration and Integration Fund (AMIF) is not just a refugee protection fund, in contrast to its predecessor, the European refugee fund.

II. The UK's Selective Participation

The UK participates selectively in EU asylum policy. In part, this reflects its status as non-member of Schengen, but also reflects other policy priorities also. During the first phase of the CEAS, the UK tended to opt in to the asylum legislation, but has taken a different view of the second phase, staying out of the second phase, with the exception of the Dublin III Regulation.[8] The UK remains subject to the first phase of EU asylum legislation, even as the rest of European member states have moved into the second phase.

Rather than dwell on the UK position, which is familiar to many readers, I will draw some comparisons with other countries that participate selectively.

Denmark and Norway differ in that the former is an EU Member State, while the latter is not. In some ways they're very different to the UK because they're both in Schengen- and Schengen matters to them a lot. Nonetheless, their cases are instructive.[9]

The Danish opt-out to EU policies on asylum were secured in response to the Danish 'No' vote to the Maastricht treaty, along with opt-outs on many other policy domains. Including security and defence, economic and monetary union, and the Justice and Home Affairs domain in general. Justice and home affairs includes immigration and asylum, and police and judicial cooperation in criminal matters. Under the terms of its Protocol to the EU Treaty, Denmark cannot opt

in. Instead, they use other legal mechanisms to adopt the EU measures, including Dublin, after the measures are adopted. This is in contrast to the UK (and Ireland) who have a right to opt in at any stage of an asylum measure being adopted. That has really put the Danes at what they see as a disadvantage. A referendum was held in December 2015, to allow the Danes to have an opt-in facility, but it was rejected.[10]

Norway in contrast is not an EU member state. But it places much value on the maintenance of the Nordic passport union, which has been in existence since the 1957. Perhaps this should make the UK pause and consider its common travel area with Ireland, which may not mean much in London, but from the perspective of Belfast and Dublin, is of crucial economic, political and cultural value. The Nordic passport union prompted Norway to associate with Schengen, quite early on.[11] As a result, Norway has several bilateral agreements with the EU, to opt in into some measures on asylum. Again, it participates, but has no say in the adoption process.

This brief discussion of Denmark and Norway illustrates that they face a trade-off between influence and autonomy. In sharp contrast, if the UK decides to opt-in to an EU measure on asylum, it can do so at the beginning of the legislative process. But if a non-EU member states opts-in, it has to take it or leave it, 'it' being the finished product. Non-EU Member States preserve their autonomy in a formal sense, but have little or no influence on the content of the policies.

III. Dublin – Deflection, Deterrence, and Distance

The idea behind the Dublin System is that asylum seekers are assigned to particular states to assess their claims.

The first principle is meant to be family reunion: e.g., if an asylum-seeker arrives in Greece, and her spouse is in the UK, then Dublin requires that her claim is heard in the UK. In practice, this rarely occurs, so in practice the main criterion becomes the state which admits the asylum-seeker to enter the EU. Of course that the vast bulk of asylum seekers arrive irregularly, as there are few legal means to claim asylum. So instead, they arrive mainly by boat to Italy and Greece, or other countries at the so-called 'frontline of Europe.' Dublin thus potentially overburdens states on the periphery. But most asylum seekers, as we know, just move on anyway of their own volition. Dublin allows states a discretion as to whether to send people back to the frontline countries, but that if a state decides to do that the other state, the first state, is under an obligation to take them back. Dublin is built on a false premise or presumption of the quality of protection systems and mutual trust and recognition across the EU. The travel route nowadays is verified by fingerprinting, but both individuals and states evade this practice.

Originally conceived of with the modest aim of preventing what was framed as asylum 'shopping' (meaning multiple asylum claims being lodged by the same individual), the Dublin System now also serves to supress asylum-seekers' mobility, justify detention, and create perverse incentives for both states and asylum-seekers. Now in its third iteration, with a proposal for the fourth,[12] it is the most troubling aspect of the CEAS. It was never meant as a responsibility-sharing mechanism. In fact, the rules are quite perverse from that point of view. If Dublin really determined responsibility for asylum claims, no refugees from 2015 would be in Germany – they would all be stuck in Greece. In practice, as has always been the case, Dublin doesn't work, and claimants move on and seek protection elsewhere, mainly in Germany, Sweden. They are free riders on the protection offered by others, in particular Germany, Sweden, Austria, Italy and France. These 5 Member States together account for more than 75% of all first time applicants in the EU-28.[13]

The UK insulates itself with juxtaposed border controls in France, and few legal access routes.

The other institutions that really matter in the Dublin context are courts. National courts and then both European Courts, the EU Luxembourg court and the Strasbourg Human Rights court, deal with thousands of cases brought by those seeking to resist Dublin returns. In 2014, the ECtHR effectively barred Dublin returns to Greece, due to living conditions deemed to be inhuman and degrading.[14]

Another case I wanted to highlight, a lesser known one, is that the High Court of Northern Ireland, precluding a Dublin return of children to Ireland, as it was not in their 'best interests'.[15] Part of the reasoning related to Ireland failure to opt into the EU Reception Conditions Directive, which means asylum-seekers live for protracted periods in hostels without any means of supporting themselves. Ireland has secured

freedom to deny asylum seekers the right to work – autonomy to oppress. The High Court of Northern Ireland refused to return the children to Ireland due to these reception conditions.

Pause to consider the implications of both rulings: In the case of both Greece and Ireland, they can avoid having to take back asylum-seekers by treating asylum-seekers badly. There is a reward for rights violations, one of the perverse incentives of Dublin.

If the UK seeks to remain out of the EU legislative standards on asylum, it may also find its standards falling below the acceptable minimum. In that case, one would have to question whether the cooperative dimension would continue to work. The UK sends back many more asylum-seekers than it takes in under Dublin. Could it continue to rely on the full 'benefits' of Dublin, if it remains outside the common standards of the CEAS?

The CEAS and the Refugee Crisis

It seems that 2015 was a 'refugee crisis'. The EU could have responded very differently, but was divided. It sought to supress smuggling on the Central Mediterranean, a secured a UN Security Council Resolution (affording it some limited additional powers) to supports its military-humanitarian mission, EUNAVFOR Med. Regarding arrivals in Greece, it secured some limited support to relocate people directly from Italy and Greece, in temporary derogation from the Dublin system, but this proved ineffective. In order to stem arrivals, it finally entered into a 'deal' with Turkey, to return and contain refugees there, in exchange for aid and some resettlement.

The UK has stayed out of these measures. To claim asylum in the UK means to reach UK territory, which for those making land journeys across Europe, usually means a further treacherous crossing via Calais. The UK government supports refugees outside the UK via aid, and has made a commitment to resettle 20,000 people over 5 years. In contrast, the EU relocation mechanisms are premised on a collective responsibility for refugees who arrive in Italy and Greece.

The refugee crisis appears in the tiny pockets of appalling suffering in Calais and Dunkirk. In January 2016, a UK Tribunal ruled in ZAT that children with close family members in the UK should be granted swift admission to the territory. At the time of writing, the ruling was being appealed by the UK government.

IV. Immigration Detention

Immigration detention has been subject to a great legal and political controversy in the UK. The UK has not opted into many of the EU measures that regulate immigration detention, such as the Recast Reception Conditions Directive, and the Returns Directive. Nonetheless, of late, UK courts using domestic legal principles have repeatedly condemned much detention as illegal. While the UK government remains unregulated by EU standards on this topic, the constraints that EU law would bring (clarity, proportionality, necessity) instead end up having to be developed by British judges.

There are different possible interpretations of this practice. Some may look at immigration detention, and see an autonomy gain for the UK in being out of the EU measures. Others, myself included, would point to the risks of this vision of 'autonomy'. Immigration detention in the UK has expanded, and it has taken protracted litigation, frequent awards of damages, and several public inquiries to clarify the applicable legal standards. I am not sure I would wish to defend this as democracy and the rule of law in action.

The addition of EU legal rules and judicial scrutiny could helpfully bolster the rule of law in the UK. This claim depends on a different sort of understanding of democracy and the rule of law, characterised by multilevel governance and sites of rights contestation. For instance, on pre-deportation detention, EU law sets an outer time limit, a matter that the UK Parliament continues to debate. There would be added value if the UK were part of these of these provisions from a rights-protective point of view.

V. On BREXIT

These reflections lead to two phenomena of relevance to BREXIT. The first is an integration paradox – that remaining 'out' may under circumstances offer greater autonomy only in a symbolic sense. In reality, states often later adopt EU policies for practical reasons, but in that case, having no say about their contents. Autonomy is apparently preserved, but real influence diminished. Of course, this is not always the case, but it seems clear that it is a risk in some policy areas, in particular when staying out may undermine the possibility of achieving other

goals. Secondly, remaining out may be a way of apparently preserving autonomy, but really it just demands domestic or human rights legal correction in order to check executive excesses.

So what is the relationship between the CEAS and BREXIT? The UK already has a opt-out/ opt-in facility as regards EU asylum law. As it already has this relationship of selective participation, what difference would not being a non-EU member be?

The difference would be that at the moment the UK can opt in at an early stage and be part of the negotiation of the measures. The Dublin System is up for revision again, and the UK government can be involved in that process. If it was a non-EU member state, like Norway or Switzerland – it wouldn't have any say in the content of the measure, but it might very well then want to join it afterwards. In the name of autonomy, it would have less influence.

Further reading

- C Costello 'EU law and the detainability of asylum-seekers' (with Minos Mouzarakis) (2016) Refugee Survey Quarterly 35 (1), 47–73.
- C Costello The Human Rights of Migrants and Refugees in European Law (Oxford University Press 2016)
- C Costello 'Immigration Detention: The Grounds Beneath our Feet' (2015) 68(1) Current Legal Problems 143.
- C Costello & E Hancox 'The Recast Asylum Procedures Directive: Caught between the Sterotypes of the Abusive Asylum-Seeker and the Vulnerable Refugee' in V Chetail, P De Bruycker & F Maiani (eds) 'Reforming the Common European Asylum System: The New European Refugee Law' (Martinus Nijhoff, 2016).
- R Adler-Nissen, 'Through the EU's Back and Front Doors: Norway's and Denmark's Selective Approaches in the Area of Freedom, Justice and Security' in C Grøn, P Nedergaard, and A Wivel (eds), Still the 'Other' European Community? The Nordic Countries and the European Union (Routledge 2015) 188.

1. My previous work on immigration detention makes clear that I find much of the practice legally and ethically dubious. See C Costello 'Immigration Detention: The Grounds Beneath our Feet' (2015) 68(1) Current Legal Problems 143.

2. K Jastram Regional Refugee Protection in Comparative Perspective Kaldor Centre Policy Brief (November 2015).

3. See further J.-F. Durieux, 'Temporary Protection: Hovering at the Edges of Refugee Law' (2014) 45 Netherlands Yearbook of International Law 221.

4. Article 67 TFEU CHECK.

5. See generally, V Chetail, 'The Common European Asylum System: bric-à-brac or system?' in P de Bruycker and F Maiani (eds), Reforming the Common European Asylum System: The New European Refugee Law (Martinus Nijhoff 2016).

6. K Zwaan (ed), The Qualification Directive: Central Themes, Problem Issues, and Implementation in Selected Member States (Wolf Legal Publishers 2007); Asylum in the European Union: A Study on the Implementation of the Qualification Directive (UNHCR November 2007), 13; ECRE, The Impact of the Qualification Directive on International Protection (ECRE October 2008); UNHCR, Improving Asylum Procedures Comparative Analysis and Recommendations for Law and Practice: A UNHCR research project on the application of key provisions of the Asylum Procedures Directive in selected Member States (UNHCR 2010).

7. For an assessment, see V Chetail, P De Bruycker & F Maiani (eds) Reforming the Common European Asylum System: The New European Refugee Law (Martinus Nijhoff, 2016).

8. See generally C Costello & E Hancox 'Policy Primer: The UK, the Common European Asylum System and EU Immigration Law' (Migration Observatory at Oxford, May 2014).

9. R Adler-Nissen, 'Through the EU's Back and Front Doors: Norway's and Denmark's Selective Approaches in the Area of Freedom, Justice and Security' in C Grøn, P Nedergaard, and A Wivel (eds), Still the 'Other' European Community? The Nordic Countries and the European Union (Routledge 2015) 188.

10. T Ibolya 'A vote of no confidence: explaining the Danish EU referendum' Open Democracy 17 December 2015.

11. Norway, Iceland Association Agreement with Schengen (1997), revised post-Amsterdam.

12. European Commission Press Release: Towards a sustainable and fair Common European Asylum Policy, Brussels, 4 May 2016.

13. Eurostat, Asylum and first time applicants Annual aggregated data, migr_asyappctza. While Hungary received 177,135 applications that year, the overwhelming majority of cases were closed due to the asylum seekers' departure from the country.

14. App No 29217/12 MSS v Belgium and Greece (ECHR, 4 November 2014).

15. ALJ and A, B and C, Re Judicial Review [2013] NIQB 88 (14 August 2013)- link.

About the speaker: Cathryn Costello is Andrew W. Mellon Associate Professor in International Human Rights and Refugee Law at the University of Oxford

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COMPAS BREAKFAST BRIEFING 46 MAY 2016


Sarah Crake,COMPAS Visual Arts Competition 2015

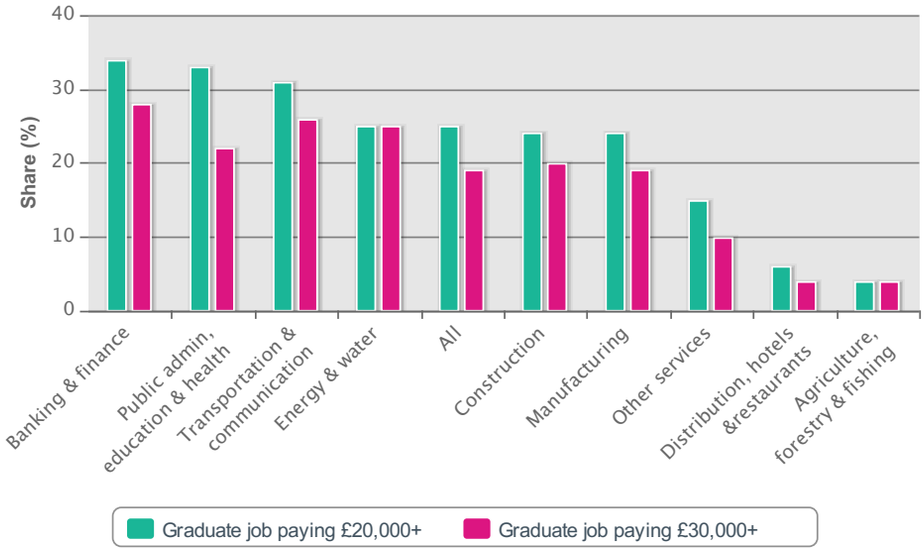
Potential implications of admission criteria for EU nationals coming to the UK

In the debate over the UK's membership of the European Union (EU), the question of how EU exit could affect migration levels has been a major point of contention. However, it is not possible to know how exactly a vote to leave the EU would affect migration to the UK, both because forecasting migration under any policy regime is difficult, and because the policies that would follow a vote to leave the EU are not known in advance.

EU exit could mean tighter controls on the migration of EU nationals, but free movement could also remain largely unaffected if the UK were to follow a model such as that of Norway, which is not a member of the EU but has access to the EU single market as part of the European Economic Area (EEA). If the UK did introduce admission requirements for EU nationals after leaving the EU, however, the requirements for work visas would be particularly significant since a majority of EU nationals coming to the UK report doing so for work.

There is no reason to assume that any admission requirements imposed on EU citizens after a vote to leave the EU would be the same as the ones that currently apply to non-EU nationals. These policies were designed to regulate non-EU migration in a very different environment, in which EU nationals did not face restrictions on migration for work. Nonetheless, even if we do not know exactly which criteria would be in place if the UK imposed admission requirements on EU citizens, it is reasonable to assume that the skill level of the job would continue to be an important part of any selection scheme in the future. As a result, it is possible to draw broad conclusions about the industries, occupations and regions in which the implications of introducing admission requirements would be more significant.

Figure 1 – Share (%) of employees working in graduate level occupations and earning at least £20,000 or £30,000, by industry category, 2015



Notes: based on analysis of the LFS 2015: Q1-Q4. Includes both full-time and part-time employees. Graduate-level jobs are defined using the 4-digit Standard Occupational Classification (SOC) from the government's Codes of Practice for Tier 2 visas.

The UK's current labour immigration policies for non-EU nationals place a strong emphasis on the skill level of the job when determining their eligibility for an employer to sponsor them to come to the UK for work. With

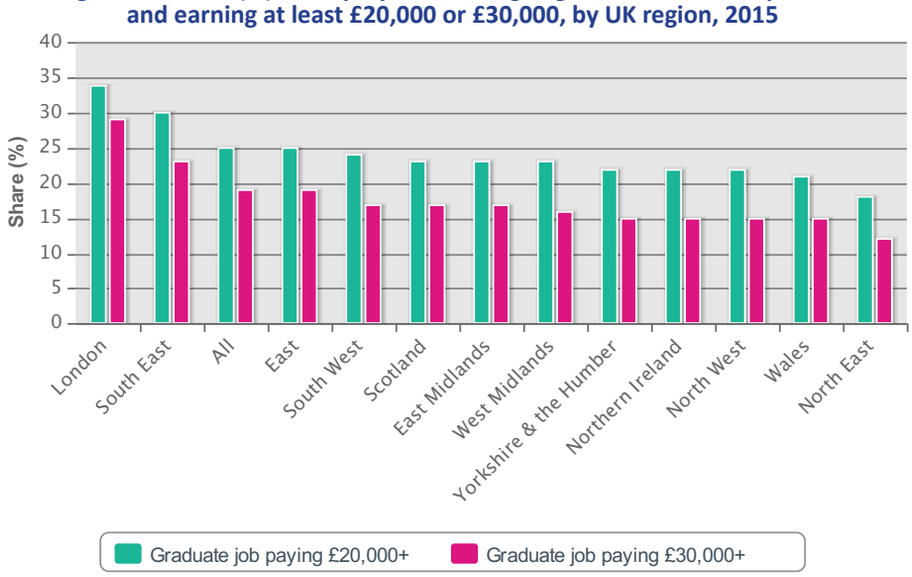
narrow exceptions for occupations deemed to face a shortage of workers, Tier 2 visas are currently available to workers in graduate-level jobs that pay at least £20,800. In 2015, most employee jobs in the UK labour market did not meet the criteria for skilled work visas. Specifically, about 25% of all employees in the UK labour market were in graduate jobs paying at least £20,000 per year- a threshold which is close to the current Tier 2 work visa requirements.

Examining differences between industries and UK regions:

- Skill-based selection criteria would affect employers' ability to sponsor EU workers in some industries much more than others. The "agriculture, forestry and fishing" industry category and the "distribution, hotels and restaurants" sector had the lowest shares of employees in graduate jobs paying at least £20,000 in 2015 (4% and 6%, respectively), while the shares were highest in "public administration, education and health" (33%) and "banking and finance" (34%) industry categories.
- Some of the occupations and industries in which employers have relied most on workers from EU countries in recent years are those in which the smallest shares of jobs are currently eligible for work visas. Most notably, the distribution, hotels and restaurants industry category is the largest employer of EU born workers, but only 6% of all employees in this sector were in graduate jobs paying at least £20,000 in 2015.
- The implications of skill-based selection for UK regions would also vary. Employee jobs in London and the South East are most likely to be graduate occupations paying at least £20,000, while Wales and the North East regions had lower shares of these jobs.

Despite uncertainty about future immigration policies, it is clear that there are scenarios in which admission requirements for EU nationals would represent a substantial departure from the status quo. It is also clear that in any selection system based on earnings and proposed occupation, there would be large differences in the implications for different industries, occupations and, to a lesser extent, regions.

Figure 2 – Share (%) of employees working in graduate level occupations and earning at least £20,000 or £30,000, by UK region, 2015



Notes: based on analysis of the LFS 2015: Q1-Q4. Includes both full-time and part-time employees.

About the speakers: Madeleine Sumption is Director and Carlos Vargas-Silva is a Senior Researcher at the Migration Observatory

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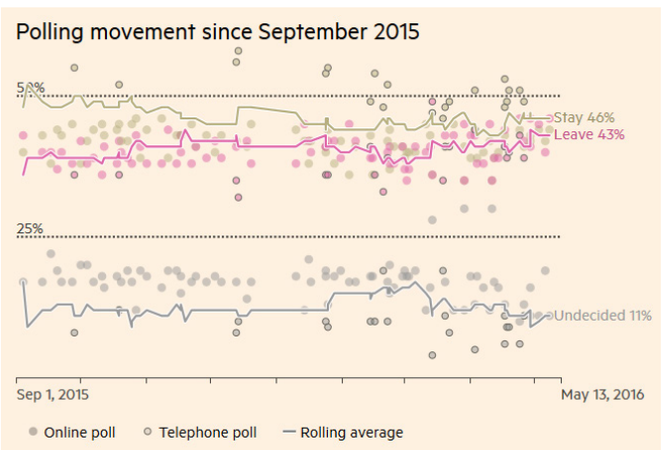
Michael Sagatis COMPAS Visual Arts Competition 2015

The Security Implications of Brexit

The UK will hold a referendum on 23rd June to decide if it will stay in or leave the European Union, perhaps the greatest political decision the country will have made since joining the community. The Financial Times' 8th May 'poll of polls' shows the gap narrowing over the past year between the yes and no camps, to the present point where the difference is in low single digits.



The debates for leaving or remaining will become ever more vociferous the closer we get to the referendum proper, debates that often obfuscate rather than deliver greater clarity, both in the UK and within the greater European Union and European Commission institutions.

Among the arguments currently raging across the European debate, one of the most hotly contested is that surrounding security. Emphasis has been placed on the fact that the UK is safer as part of the EU, or that EU membership offers little advantage – that membership of it neither keeps terrorism at bay, or adds little added value other than being able to network with other EU countries.

Richard Walton, former head of Counter Terrorism Command at New Scotland Yard, 2011-15, stated in a Telegraph article of 26th February, "from my own experience as head of the Counter Terrorism Command, I'd say that Britain's security depends on many different factors – but membership of the EU is not necessarily one of them".

The stark divisions have also been demonstrated in the strictly military camps, with General Sir Mike Jackson, a former head of the army, stating that there is a security dimension to the EU, "but in my mind it is more of a policing and judicial matter rather than a military matter. The military dimension is provided by NATO." General Lord Stirrup, a former Chief of the Defence Staff, has commented that although he doesn't "carry a torch for the European Union at all…one has to look at the realistic alternative, not just the World as we wish it to be. In light of the current threats like ISIL, Russia and other threats that might emerge you have to think about how we secure our society".

At the 'lower' end of the security spectrum, many have voiced their fears that exit from the European Union would necessarily end the UK's involvement in, for example, the European Arrest Warrant (EAW), a mechanism by which individuals wanted in relation to significant crimes are extradited between EU member states to face prosecution or to serve a prison sentence for an existing conviction. Before the EAW was introduced extradition used to take an average of one year, but now that has been cut to an average of 48 days, the European Commission says. A suspect must be handed over within a maximum of 90 days after arrest. In cases where a suspect agrees to surrender the average extradition time is 16 days.

However it is worth stating that a report by the campaign group Fair Trials International in May 2011 said EAWs "are being issued for minor

offences and without proper consideration of whether extradition is proportionate". That concern was echoed by the European Commission itself, which said the use of EAWs for minor offences had undermined confidence in the system. In any case, politicians such as Lord Howard have commented that the UK would undoubtedly agree to an equivalent mechanism with European Union states and the European Commission.

Similarly, many have argued that the UK has a unique and successful counter-terrorism machine, something 'envied across the world'. The UK routinely shares intelligence across international boundaries and Brexit would not affect this. The European security organisations – Europol and the Schengen Information System – many have argued, are useful, but not essential. Some arguments maintain that Europol is largely irrelevant to day-to-day operations within the counter-terrorism sphere, and the Schengen Information System does not necessarily control the movement of terrorists across borders, nor do you have to be in the EU to use it.

The Islamic State of Iraq and the Levant, meanwhile, is exploiting weaknesses across Europe – porous borders, free movement of firearms, limited police engagement with minority communities, little joined up intelligence – which all agree need addressing urgently to prevent the next attacks.

In the UK, however, the border (for obvious reasons) is less porous, there are few illegal firearms in circulation, and the UK invests heavily in building the confidence of communities to report suspicious behaviour. The UK also leads in collaboration between its intelligence agencies and the counter-terrorism police network. Would it really make any difference to the security of the UK border if the country were to leave the EU? Crucially, countries such as Turkey and Jordan are crucial to the fight against, for example, ISIL. Both have been successfully engaged by the UK, both are outside the European Union.

Conversely, on 22nd February, Europol Director Rob Wainwright said that if the UK turns its back on the EU and the police cooperation capabilities it offers, "it would make the UK's job harder, I think, to protect the citizens from terrorism and organized crime". He accepted that the UK "could choose different immigration and visa policies" upon leaving the EU but said the country would remain vulnerable to "clandestine criminal networks smuggling people" if it was in or out.

Meanwhile, Eurojust, established in 2002, was created to improve handling of serious cross-border and organized crime by stimulating investigative and prosecutorial co-ordination among agencies of the EU Member States. Kier Starmer QC, former director of the Director of Public Prosecutions in the UK, has commented that the UK's involvement in Eurojust provided many benefits with the coordination meetings being the most important. He also considered Eurojust to be good value for money, costing the UK a relatively modest £360,000 per annum. Costs would be much greater if the UK were to rely upon a network of bilateral liaison magistrates in each country instead of the centralised liaison facilities made available in The Hague. Theresa May has commented on the fact that it is difficult to indicate Eurojust's degree of effectiveness based upon the casework data that was available.

The lack of consensus around whether an instrument such as Eurojust is useful further highlights the polarisation in opinion around the added value provided by mechanism and instruments within the European Union and through the EC. Like figures used by the opposing parties in the Scottish referendum debate, political stance and belief continues to supersede a deeper analysis of the relative usefulness that membership of the European Union provides, and the positive or negative qualities of the instruments contained therein. By the 24th June the UK will have to begin dealing with the consequences either way.

About the speaker: James Kearney is Senior Programme Manager at the Institute of Strategic Dialogue

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